

KIPP AND CHRISTIAN, P. C.

ATTORNEYS AT LAW

600 COMMERCIAL CLUB BUILDING

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CARMAN E. KIPP  
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DARIN G. KENDALL  
TERESA L. STURM

November 9, 1982

Mr. Robert Barnes  
P. O. Box 313  
Cisco, Utah 84515

Re: Mr. Howard Davidson

Dear Mr. Barnes:

Please be advised that I represent the above-captioned individual. He has advised me that you have leased certain properties to him designated as Poor Boy Leases. At the present time you are presently conducting activities on those leases that may amount to mining or testing.

This letter is to advise you that any mining or testing or other such activities on your part on the Poor Boy Leases is done by you on your own initiative and at your risk and is not being done with the approval, acquiescence or condonation of Mr. Davidson. You are solely responsible for such conduct and the results of same.

Yours very truly,

KIPP AND CHRISTIAN, P.C.

D. Gary Christian

DGC:dlc

cc: Mr. Howard Davidson

L E A S E   A N D   O P T I O N

This LEASE made and entered into as of the \_\_\_\_\_ day of November, 1980, by and between ROBERT J. BARNES and RAY BRANSCOM, JR., hereinafter referred to as Lessors, and DAVE-TEX, INC., hereinafter referred to as Lessee,

WITNESSETH:

WHEREAS, Lessors are the owners of the following described unpatented mining claims and interests in lands covered thereby, hereinafter referred to as the Subject Premises, which are situated in Grand County, State of Utah, to-wit:

NOTICE OF LOCATION RECORDED ON  
THE RECORDS OF GRAND COUNTY,  
UTAH, AT:

<u>NAME OF CLAIM</u>	<u>BOOK</u>	<u>PAGES</u>
Mahony Placer No. 1	R-244	200
Roberts Bottom Placer	R-253	563
Nodac Placer	R-257	285
Poor Boy 1, 2, & 3	R-91	363-365

It is understood by the parties hereto that Lessors have additional properties that the parties desire to include in and make subject to this Lease by way of Addendum at such time as those additional properties are identified by name and notice of location.

WHEREAS, Lessors are desirous of granting to Lessee a mining lease covering the Subject Premises upon the terms and conditions herein contained; and

WHEREAS, Lessee is willing to take and receive such Lease on the terms and conditions herein set forth;

NOW, THEREFORE, the parties for such purpose agree as follows:



I

GRANT OF LEASE

For the considerations herein set forth, Lessors hereby demise, lease and let, and by these presents to demise, lease and let to Lessee the Subject Premises, together with all rights of way, easements, water and water rights of every kind and nature which are situated upon or appurtenant to the Subject Premises and are useful, convenient or necessary for Lessee in the exploration, development or mining of any or all of the lands covered by the Subject Premises and this mining lease and the milling, processing, concentrating or refining of gold mined or extracted from the Subject Premises.

II

TERM OF LEASE

The Lease herein granted shall continue and extend for five (5) years from the date hereof, to and including 12:00 o'clock noon on the \_\_\_\_\_ day of November, 1985.

III

OPTIONS FOR ADDITIONAL PERIODS

Lessors hereby grant Lessee the option to extend this lease for five (5) additional five (5) year periods on the same terms and conditions as set forth in this Lease Agreement. The first of said five year periods shall begin with the expiration of the initial term of this lease and the second five year period



to commence upon the expiration of the first five year extended period if said first five year period has been elected by Dave-Tex and each succeeding five year period to commence upon the expiration of the next preceding five year extended period. In the event Dave-Tex desires to exercise any of these additional five year extensions, it shall notify Lessors in writing.

#### IV

##### LESSEE'S RIGHTS IN THE SUBJECT PREMISES

Lessee shall have and is hereby granted by Lessors the exclusive right:

(a) To enter upon, explore, examine and investigate the Subject Premises and to survey, map, test and sample the Subject Premises and to carry on such geological and geophysical work with respect thereto as Lessee in his sole judgment and discretion may desire.

(b) To prospect and search for minerals in and on the Subject Premises by means of drilling, trenching, drifting, cross-cutting, raising, and sinking of shafts or winzes and by such other development or exploration methods, either surface or underground as Lessee may in his sole judgment and discretion desire.

(c) To delineate gold ore and to secure cores and samples from the Subject Premises at such places and in such quantities as Lessee shall, in his sole judgment and discretion, desire.

(d) To mine, extract, mill, process, concentrate, refine or otherwise treat any gold from the Subject Premises in unlimited quantities and to ship, market, sell or otherwise dispose of the same, or concentrates produced therefrom, as



Lessee in his sole judgment and discretion may desire.

(e) To construct, install, operate and maintain upon the Subject Premises such mills, processing, concentrating or refining plants, roads, power and telephone lines, ditches, camps, hoists, buildings and other structures and facilities as Lessee may in his sole judgment and discretion desire.

(f) To take any and all other action upon or in connection with the Subject Premises, whether similar to actions described above or not, as Lessee in his sole judgment and discretion may desire, it being understood that Lessee agrees to conduct all mining operations on the Subject Premises in accordance with good mining practices and in a good and miner-like fashion.

(g) To perform the annual assessment work required by law on the unpatented mining claims.

(h) During the period of the operation of a pilot plant on the subject premises which is under contemplation by the parties to this lease, Lessee shall have the right to operate said pilot plant under the mining and refining permits of Lessors.

## V

### ROYALTY

Lessee agrees to pay Lessors royalties determined as follows with relation to any gold mined from the Subject Premises or concentrate produced therefrom and sold: In the event that the gold recovered from the claims designated herein amounts to three-fourths (3/4) ounce or less per ton, then and in that event a royalty of ten per cent (10%) will be paid to Lessors; in the event that the gold recovered exceeds three-fourths (3/4) ounce



per ton, then and in that event a twenty per cent (20%) royalty shall be paid in the designated percentage referred to. Any royalty paid to Lessee by Lessors shall be the designated per cent of net mill or smelter returns (as that term is hereinafter defined) received by Lessee from the sale of any shipment of gold.

The term "net mill or smelter returns" when used herein shall mean the amounts received by Lessee from the smelter or mint which purchases gold mined from the Subject Premises or concentrates produced therefrom, including all subsidies or bonuses paid to the Lessee by the smelter or mint or any other agency with relation to such gold and based upon the quality or quantity thereof, after deducting therefrom all charges and amounts deducted by the smelter or mint and all sampling and assaying charges, umpire assay charges and all railroad, truck or other haulage charges incurred for transportation from the mine to the smelter or mint of the gold so produced and not otherwise deducted by the smelter or mint.

Royalties payable pursuant to this section shall be paid directly to the Lessors by the smelter or the purchaser of the gold.

Lessee agrees to perform and pay for the requisite annual assessment work required by law and perform the annual assessment work required by law, subject to termination provisions herein contained.

Lessee agrees to keep an accurate account of all sales of gold extracted by Lessee from the Subject Premises and concentrates produced therefrom showing sales, prices, dates, purchasers, the mining claim or mining claims from which removed, the gross receipts derived therefrom, charges and amounts deducted by the smelter or mint with relation thereto, all costs of umpire assaying paid by Lessee in connection therewith, and all railroad



track or other haulage charges incurred for transportation thereof from mine to the smelter or mint. All records, books and accounts of Lessee relating to such sales shall be open at all reasonable times to inspection by Lessors or their authorized agents.

## VI

### COVENANTS OF LESSORS

Lessors jointly and severally covenant and warrant that there are no outstanding royalty obligations or other payment obligations with relation to the Subject Premises. In the event that it is hereinafter determined that any of the Subject Premises are subject to royalty obligations or other obligations to make payment of any type other than the royalty interests herein reserved to Lessors, Lessors shall assume and pay all such outstanding royalty payments or other obligations to make payment and Lessors jointly and severally agree that they will indemnify and hold Lessee harmless from any claims by third parties arising out of such royalty or payment obligations.

In the event that Lessee shall become compelled by court order or otherwise to make any royalty payments or any other payments with relation to the mining claims or any of them, other than the royalty payments which become due and payable to Lessors pursuant hereto, Lessee shall have the right to retain all royalty payments which thereafter become due and payable to Lessors hereunder, until such time as Lessee has recovered the total amount so paid by Lessee pursuant to such court order, together with interest on the unpaid balance thereof at the rate of six per cent (6%) per annum.



Retention by Lessee of royalty payments pursuant to the foregoing paragraph shall not under any circumstances be deemed to constitute a default by Lessee hereunder, and the amount so retained by Lessee shall for all purposes of determining compliance by Lessee with the provisions of this mining lease, be deemed to have been paid to Lessors. The provision of the foregoing paragraph shall not be deemed to limit or restrict in any manner the rights of Lessee pursuant to this section. It is intended that the rights granted by the foregoing paragraph are granted as additional protection to Lessee. Lessee shall have the right at any time to enforce by appropriate action all rights granted to Lessee pursuant to and all rights of Lessee arising out of this section irrespective of the provisions of the foregoing paragraph.

## VII

### DEFAULT

Should any default in any of the terms hereof occur, Lessors shall give notice to Lessee in writing as hereinafter provided, designating such asserted default. Lessee shall thereafter have a period of thirty days from the date of receipt of such notice within which to correct the defaults of which he has received notice. Should Lessee fail to correct said defaults within said thirty (30) day period, Lessors may, at their election, cancel and terminate this mining lease.



## VIII

### LESSEE'S RIGHT OF TERMINATION

Lessee shall have the right at any time after the performance of the annual assessment work requirements for the assessment year ending \_\_\_\_\_, 19\_\_\_\_\_, to terminate this lease agreement, and subject to the further provisions of this article to be free from any and every obligation and liability hereunder or in any manner arising out of any term, covenant and condition hereof. If Lessee shall elect to so terminate, he shall deliver or mail to Lessors a notice of such termination, which shall be effective by its terms thirty days after the date of such delivery or mailing. Upon termination of this lease agreement by Lessee as hereinabove provided, this lease agreement shall wholly cease and end and Lessors shall be entitled to:

1. Forfeit and retain all payments theretofore made by Lessor; and

2. Recover immediate possession of the Subject Premises, subject only to the right of Lessee to remove his equipment and property as herein provided, and Lessee shall be fully exonerated, released and discharged of and from all obligations and liabilities under this lease agreement, except only that he shall:

- A. Perform the required annual labor upon the Subject Premises for the current assessment year, if the effective date of such termination shall be sixty days or less prior to the end of such assessment year; and

- B. Pay any taxes then levied or assessed upon the Subject Premises or upon Lessee's property used or stored thereon, or any other items Lessors are entitled to be paid.



Lessee may at any time during the life of this lease agreement install upon or remove from the Subject Premises any tools, machinery, equipment and facilities owned or furnished by Lessee. It is mutually understood and agreed that if by the forfeiture or termination of the rights of the Lessee hereunder, Lessee quits possession of the said Subject Premises, he or his agents or servants may remove any tools, machinery, equipment and facilities theretofore by Lessee placed upon said Subject Premises, said removal to be at Lessee's cost and expense and may be accomplished within six months following the surrender of the Subject Premises, except that in such event all installed underground timber, tracks, piping and wiring shall thereupon be and become the property of Lessors.

#### IX

#### NOTICE

Any notice to the Lessors may be given to Robert J. Barnes, P. O. Box 313, Cisco, Utah 84515, and to the Lessee by giving notice to Dave-Tex, c/o DeLoss H. Patten, 430 East Center Street, Salem, Utah.

#### X

#### FORCE MAJEURE

All obligations of Lessee under this mining lease shall be suspended while, but only so long as and to the extent that Lessee is prevented from complying with such obligations in whole



or in part by strikes, lockouts, acts of God, unavoidable accidents, uncontrollable delays by transportation, inability to obtain necessary materials in open market, lack of a suitable available market for sale at a profit to Lessee of gold produced from the mining claims, or of concentrates produced therefrom, and any state or local laws, regulations or orders or other matters beyond the reasonable control of Lessee, whether similar to the matters herein specifically enumerated or otherwise. Lessee shall not be required against his will to adjust any labor dispute or to question the validity of or to refrain from judicially testing any Federal, State or local law or regulation or rule.

## XI

### TITLE DISPUTES

Notwithstanding anything herein to the contrary, if a genuine title dispute arises or develops with respect to all or any premises and the lands covered thereby, Lessee shall have the right at his sole option to relinquish to the Lessors the disputed portions or areas of said Subject Premises which are affected by said adverse claims. Lessors shall be obligated to reimburse Lessee for all royalties which were paid to Lessors for gold mined from the disputed area or concentrates produced therefrom or any other damage incurred by Lessee as a result of said title dispute. In the event that Lessors fail to reimburse Lessee as provided in this section, Lessee shall have the right to retain all royalty payments which thereafter become due hereunder until such time as he has recovered from said retained royalty payments an amount equal to the amount for which Lessors are obligated to reimburse Lessee as aforesaid, together with



interest on the unpaid balance thereof at the rate of six per cent (6%) per annum. The provisions of the immediately foregoing sentence shall not be deemed to limit or restrict in any manner the rights of Lessee to bring legal action against Lessors to recover the amounts for which Lessors are obligated to reimburse Lessee, as hereinabove in this section provided, it being understood that the rights of Lessee pursuant to this section shall be cumulative and not alternative or restrictive.

Retention by Lessee of royalty payments pursuant to this section shall not under any circumstance be deemed to constitute a default by Lessee hereunder and the amount so retained by Lessee shall for all purposes of determining compliance by Lessee with the provisions of this mining lease, be deemed to have been paid to Lessors.

Lessee shall have the right if he so elects to retain all royalty payments which become due and payable hereunder with relation to gold removed from the disputed portions or areas of said Subject Premises or concentrates produced therefrom until such time as Lessee has received from Lessors written evidence satisfactory to Lessee that said title dispute has been resolved, and that Lessors are legally entitled to receive such royalty payments.

Lessee shall not be required to pay any royalty payments to Lessors concerning any gold produced therefrom mined from disputed areas which Lessee relinquishes pursuant to this section, nor shall Lessee be required to pay royalty payments with relation to gold produced therefrom, mined from disputed areas which are ultimately determined to be the property of others.



XII

ASSIGNABILITY

This mining lease is and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns. Lessee shall have the right without the consent of Lessors to sell or assign, all or any part of the rights of Lessee arising under the terms of this mining lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LESSORS

\_\_\_\_\_  
ROBERT J. BARNES

\_\_\_\_\_  
RAY BRANSCOM, JR.

LESSEE:

DAVE-TEX

By: \_\_\_\_\_  
President